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**From:**

**Sent:** Tuesday, June 5, 2012 10:36 AM

**To:**

**Cc:**

**Subject:** Information Reporting Requirements for Condemnation Payments

This is to confirm our prior oral advice in response to your request concerning the reporting requirement and issuance of Forms 1099 by the State Department of Transportation (DOT) when making payments for real property acquired through condemnation proceedings. Your email states that the DOT issues Forms 1099-MISC for the condemnation awards, pursuant to I.R.C. § 6041, and is not sure whether the DOT is the proper “payer” to be shown on the 1099-MISC since the payments are actually issued by the court. The inquiry from DOT to you also is seeking advice concerning the reluctance or refusal of the property owners to provide their taxpayer identification numbers or Social Security numbers for the Forms 1099. For the reasons explained below, we conclude that the DOT has a reporting requirement under I.R.C. § 6045(e), rather than § 6041, and must issue Forms 1099-S reflecting the entire cash payments to the recipients, unless the transaction or the recipient is exempt from the reporting requirement. The DOT is required to solicit the TINs of the transferors, but will not be subject to penalties if it has complied in good faith with the requirements set forth in the regulations to solicit the TINs.

We assume for this analysis that the DOT acquires title to the real property as part of the condemnation proceeding. A condemnation is treated as a sale or exchange of property for tax purposes. Place Realty Corp. v. Commissioner, T.C. Memo 1962-144; I.R.C. § 1033. Accordingly, the DOT has a reporting requirement under I.R.C. § 6045(e)(1) regarding returns required in the case of real estate transactions. That section requires the “real estate reporting person” to file an information return with the IRS, using Form 1099-S, and send a statement to the transferor with respect to the real estate transaction. While some or all of the condemnation award may be excluded from income, the regulations under section 6045 provide that the entire cash proceeds of the “real estate transaction” are reportable even if the transaction is not currently taxable. Therefore, under Regulation § 1.6045-4(h)(1)(iv), the Form 1099-S must include the entire amount of the “gross proceeds” of the real estate transaction, including the expenses of the transferor such as legal expenses. Reg. § 1.6045-4(i)(2).

The regulations define “real estate reporting person” as the person responsible for “closing the transaction” or, in the absence of such a person, the transferee. Reg. § 1.6045-4(e)(4)(iv). Accordingly, the State DOT, the transferee, is the proper party to issue the Form 1099-S, and the DOT information should be set forth on the form as the “Filer” information.

Reporting under I.R.C. § 6045(e) is required for transactions with value of \$600 or more. Reg. § 1.6045-4(c)(1)(iii). Certain sales or exchanges are exempt, and certain transferors are exempt recipients, as set forth in the Code, regulations, and form instructions. See Reg. § 6045-4(d) for a description of certain exempt transferors. In addition, the seller of a principal residence may be exempt from § 6045(e) reporting requirements if the seller provides the real estate reporting person with a certification that the sale involves the principal residence, and that the full amount of gain on the sale is excludable from gross income under I.R.C. § 121. See Rev. Proc. 98-20, 1998-7 I.R.B. 32, for a sample certification form.

With respect to the transferor’s information, the regulations require the reporting person to “solicit a TIN from the transferor at or before the time of closing.” Reg. § 1.6045-4(l)(1). The transferor is required to furnish the TIN to the reporting person and certify that the TIN is correct. If the reporting person does not receive the transferor’s TIN, the reporting person will not be subject to penalties, assuming that the reporting person has complied in good faith with the requirement to solicit the TIN. Reg. § 1.6045-4(l)(2).

Please contact me if you have any further questions in this matter.